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Walter Gellhorn

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WALTER GELLHORN

*Peter L. Strauss**

James Baldwin once said that "the world is held together, it really is, by the love and passion of a very few people." I will always think of Professor Gellhorn as one of those select few.

Lynn Huntley, Southern Education Foundation

With the exception of my own father, I am hard put to think of anyone I have so admired since I became an adult. . . . This is not to say that I always agreed with Walter. There were times when I was convinced that his commitment to his ideals and his generosity of spirit (not to mention his occasional stubbornness) obscured from him (or led him to disregard) some of the less admirable motives stirring in others. But for every one of those moments there now come flooding back dozens, if not scores, of memories of his extraordinary scrupulousness and profound decency. I think of all the ways, many so subtle as hardly to be evident to others, in which he encouraged and helped others and of how he so often used his great intellectual power and accompanying reputation to shelter and nurture others. I have long since lost track of how many times I have turned to my memories of him or asked myself what he would have done in order to find my way through a complex situation.

William P. Alford, Harvard Law School

"A man must share the passions and action of his times, at pain of being judged not to have lived."

Oliver Wendell Holmes, Jr.

Text appearing in the portrait of Walter Gellhorn, on the blackboard behind him; Columbia Law School

Walter Gellhorn had been a primary figure in administrative law and at Columbia for thirty-five years when I arrived here twenty-five years ago, hoping to establish a scholarly career. Yet it is impossible to recall any expectations I might have had about my relationship with him at the time. He was the unseen father of a camp and college friend whose warmth and wit I had cherished, more than he was a dominant member of Columbia's remarkable faculty. He quickly became my mentor and guide. I seem to have spent all the time since that day learning at his feet the inadequacies of a time like this to celebrate extraordinary contributions and an extraordinary life.

Perhaps a reason for knowing so little about him was that grand theory had been more popular at Yale, and Gellhorn was anything but a grand theorist. That he was a scholar of piercing insight and deep commitment is amply shown by his subjects of study—the family court, the

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ombudsman, agencies as they were—and his accomplishments. No one else has twice won Harvard's Henderson Prize, the country's highest award for administrative law scholarship; for more than half a century, his vision of American administrative law dominated law school presentations of that subject. But characteristically he insisted on dealing with agencies as human, political institutions in the real world, and that forbade heady generalization. The studies performed under his direction for the Attorney General's Committee on Administrative Procedure in 1940-41 were exemplars of field biology, not theoretical physics; and they remain as good an account as we have of the day-to-day functioning of federal administration. He delighted in recounting the frustration of one member of that Committee:

"Gellhorn, is there *no* generalization we can safely make about administrative procedures, have you found *nothing* we can capture for a uniform federal code?"

Gellhorn acknowledged that perhaps it was safe to state as a general proposition that administrative actions must occur in public, in the disinfecting sunlight.

The ensuing sigh of satisfaction had barely ended when Gellhorn withdrew the concession, remarking that in the regulation of banks, privacy would often be essential in hearing processes, to avoid the fears that might grow from even the breath of suspicion, so soon after the Great Depression.

That there were no universal truths was Gellhorn's one universal truth—one reason he never succumbed to the ego-gratification of a treatise, the summative account his friends and admirers urged. There were instead the ever-growing clipping files, the hundreds of pages of teacher's manual freely sharing insights and questions that might lead acolytes into the forest, his constant commitment to and support for study of administrative law and agencies as they were and for reform and improvement at the margins, responsive to the complex realities of particular programs. And there was the spreading pool of administrative law scholarship that he could watch, with pleasure, spring from his efforts, whether or not their role was ever fully acknowledged.

Teaching the Fifth Edition, learning from its prodigious Teacher's Manual, opened his mind to my appreciation in the conventional way, but other memories dominate. Any conversation with alumni about Walter Gellhorn, I quickly learned, would soon turn to how it was Professor Gellhorn who sparked this interest, who found me that job. How many of our most distinguished alumni became what they were in response to his guidance, or as a result of a telephone call he made on their behalf? For a young colleague, an anxious and sensitive one at that, the hand was light, but its presence constant. He was in his third year as a founding member of the Council of the Administrative Conference of the United States, where he would remain through seven administrations until its demise just weeks before his own. Wouldn't his new colleague appreciate the chance to study the operation of some government agency

under its aegis — the Bureau of Land Management, as it turned out — to see how administrative law worked outside the Beltway, perhaps to contribute to improvement in some small way? Or, “Peter, I’ve been asked to give a talk to a distinguished group; would you mind reading this draft and sharing any ideas you might have for its improvement?” As a lesson in the democracy of faculty life at Columbia, on which he tirelessly insisted, this was indeed extraordinary; so often law faculty criticism is invited and flows only in the other direction.

Professor Gellhorn’s devotion of time and energy to his students was legendary. Teaching appealed to him not only for its intellectual qualities, but also for the opportunities it provided to be beneficial to others. It was, as he would often say, the legal career that would never oblige him on behalf of one to seek the disadvantage of another. Resolutely, he opposed faculty resolutions of “congratulations” to colleagues foolish enough to leave the finest opportunity the law offered for a judgeship or other alternative career. He was an imposing figure in large classes, stunningly handsome and energetic as well as intellectually dominant. An early student would recall that after ten minutes of listening to Professor Gellhorn, he seriously considered quitting law school because, he wondered, how could any of us measure up to such talent? In seminars Professor Gellhorn demanded hard work and rigorous analysis, but his style was one of energy and cheerful, supportive criticism. Before clinical education, he offered a “clinical” seminar supporting public interest litigation at the ACLU, the NAACP Legal Defense Fund, and the like, to which he devoted a clinician’s hours. For years, he led a Seminar on Legal Education for younger colleagues as well as for the graduate students he helped to start on teaching careers. The chance to join him there gave me a profound education in his commitment and style. No paper escaped a profusion of marginalia—about substance, about writing, posing challenges, and offering praise. If split infinitives and dangling participles would not be tolerated (and they were not), he would deliver his admonitions with a grace and humor that would not permit their recipient to lose sight of his wish for her success or of his essential good will. He might let slip to a colleague a comment that suggested discouragement about a student whose work he was addressing; but if for the student the criticism was sometimes stern, it was never despairing. To this day, I cannot read a student paper without Walter at my shoulder, encouraging response and engagement, modelling a friendly and supportive tone.

He stood on ceremony, his own or anyone else’s, less than almost anyone I know. Early in Walter’s informal ambassadorship for the American legal system in the People’s Republic of China, Henry Pitney recalls, he came to understand that the official addressing the students in Chinese was telling them not to bother the American professors with their questions but to bring them to him. As soon as he could, Gellhorn took the microphone and, to spontaneous applause, countermanded those or-

ders. "I am now going to demonstrate the difficulties of international communication . . . Should you have any concerns about the course or the law, you should come directly to us with your questions, and under no circumstances are you to go through others." When the shoe was on the other foot, when visitors came to us, it was Gellhorn who would see to it—literally taking the visitor by the hand—that he knew where the libraries were and had a pass to use them, that he met the colleagues who might be helpful, that he had a place to work, a collegial lunch, or an afternoon sherry. Where the time came from, I could never tell. A letter did not rest on his desk for a day without a friendly response, nor did a reprint, without encouraging appreciation to the author and a note transmitting it to a colleague who might be interested. Walter was constantly seeking ways to be of service to the institutions with which he made his life—Amherst College, the Mont Cenis cooperative, or the Administrative Conference of the United States—as assiduously and energetically as he was to the Law School. And in each of these places he was a man who took care to make human contact, to introduce himself to a student—not *his* student—in the elevator, and then never pass her in the halls without greeting her by name and adding a question or comment suited to the day.

He gave perhaps his closest study to institutions that seek to improve justice in relatively small, informal, and meliorative ways—Family Court, and then the Ombudsman. I imagine him imagining his own life in the latter role, a person who would investigate, make reports, seek accommodations. He was the colleague to whom, shortly before I joined it, our faculty entrusted a full-year study of its curriculum and needs that would arm a generation's thought about its future directions. While surely he had views and the purpose to put them forward, he also had the capacity to hear the interests and needs of others and to reflect them fairly and fully in any report he might make. The Administrative Conference was a body a person might think designed for failure—100 lawyers periodically brought together from private and public practice, of every political persuasion, to attempt consensus on proposals for reform of this or that aspect of administrative procedure. He was the glue that held the Conference together. Walter endlessly promoted both the research projects that produced its diet of recommendations and the young careers in administrative law scholarship that went with them. In the Assembly, he would listen patiently to the debate, gauge the moment, and then suggest the words that would propel us into the realization, once again, that we could agree.

The graduate program reflected two of his deepest commitments, to teaching and to engaging the world in the project of seeking justice. Former students of his have graced the faculties of most law schools in this country, and of many abroad. Before his retirement, he was a fixture in the hallways at meetings of the Association of American Law Schools, whose President he had once been. Half a dozen or more new teachers

each year might trace their careers to his intervention, and a similar number would be enlisted to spend the coming year under his tutelage at Columbia, preparing themselves for that transition. He built confidence and competence, stoked enthusiasms, smoothed the road to interviews and ultimate employment. Graduate study was the opportunity to build scholars, and the shape he gave the school's doctoral program put that charge at its core. Study for the LL.M. was a different matter; here most students came from abroad and returned to careers of distinction in teaching, government, and practice. Walter's devotion to them in New York City would become theirs to him on their return home. He would visit fifty-three countries in his lifetime, pursuing always his understanding of law in its many forms—bringing American ideas to shape their practice, returning with theirs that might shape ours. His students responded with loyal affection, as when his former students and friends in Japan bestowed on Columbia a unique treasure, the Walter Gellhorn professorship; few Universities can boast a chair endowed so heavily by graduates and friends from abroad.

Perhaps I may be permitted to return to personal experience. On my return to Columbia from an interval as a government lawyer, Walter honored me with an invitation to join his casebook, which would continue (as it still does) to bear his name. He signaled, too, his hope that I would assume responsibility for the graduate program that had so long been in his care. These duties have provided ample, and humbling, opportunities to witness the enormities of Walter's life and contributions in the compromises of my own. What is meet to report here, and so thoroughly characteristic, is never having felt anything but cordial support and encouragement in them from Walter. Not criticism, not defensiveness, not unhappiness that I might be taking his casebook or his seminar in directions different from what he might choose. What might be the impact on his "name" was simply not an issue. He was interested to hear why this or that new direction seemed appropriate; wise advice was always there for the asking; and the transitions were as smooth, as supportive, as complete as one could possibly imagine.

Selflessness is not to be confused with spinelessness. Walter's courage during the difficulties of McCarthyism and the Civil Rights era is legendary. In his later years it became more personal, as he faced down in utter privacy the illness that would eventually carry him away. We simply were not allowed to know that he was ill, to be diverted by any personal problems he might be having. He was in his office, or on the road, helping the law school and his friends, day in and day out, until the week before he died. That courage, and his other qualities, too, we know, were not his alone. In Kitty Gellhorn, his gracious and energetic wife of 63 years, he found perhaps his only match in life. She did not want these pages, or the memorial service at which they will be reflected, any more than Walter did. She knows for herself what an extraordinary, luminescent life Walter lived, how much he contributed—and now that it is over,

well it is done with, and why bother with the energy and fuss required to celebrate what you could never capture anyhow. That just isn't important to her, as it wasn't to Walter. If it is to be tolerated, to be put up with, that is just because the institutions that meant so much to Walter want the comfort of such an occasion, certainly not (in itself) that there is a great life here that must be celebrated. The reader will see the pattern, and share with her and with us our deep sense of loss, as well as our profound gratitude and pride to have had Walter so long among us.

Words cannot capture Walter's humanity and contribution. That this essay is inadequate to its task is the inevitable fate of attempting to celebrate so extraordinary a life. If from these pages a human being emerges, one whom you would like to have known (or perhaps you did) and one who would have greatly enlarged your life had he touched it (or perhaps he did), then at least we have been heading in the right direction.